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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,931	01/23/2004	Nady E. Nady	5032-105 US	7857

7590

07/28/2004

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EXAMINER

COMSTOCK, DAVID C

ART UNIT PAPER NUMBER

3732

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,931

Applicant(s)

NADY, NADY E.

Examiner

David Comstock

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Nestor et al. (4,099,521).

Nestor et al. disclose a retractor device comprising an elongated element 5 adapted to be mounted to a surgical table via clamp B (see Fig. 1). An elongate curved arm 20 is slidably mounted on the elongated element via slide member 25. The elongate arm includes a plurality of open channels 34 slidably mounted thereon. The device includes a plurality of flexible elements 35, which are received on the elongate arm (see Figs 2, 8 and 9). Bifurcate gripping elements 36 are attached to the flexible elements (see Fig. 10). The flexible elements comprise a plurality of raised circular portions that are received in the open channels (see Figs 2, 8 and 9). Nestor discloses using the device to retract body skin folds, i.e. retracted cheek skin around the mouth (see Fig. 2 and col. 5, line 62 - col. 7, line 42). With regard to claims 13-15, it is noted that claims directed to the structure of the apparatus are not entitled to patentable weight in claims directed to the process of using the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nestor et al. (4,099,521) in view of Lange (5,709,646).

Nestor et al. disclose the claimed invention except for providing a replaceable elastomeric cover. Lange discloses a retractor 30 having a replaceable elastomeric cover 12 to reduce slipping in the body cavity, to reduce trauma to tissue and to ease the workload on surgical personnel (see Figs. 1-3 and col. 1, lines 56 - col. 2, line 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the retractor device of Nestor et al. with a replaceable elastomeric cover, in view of Lange, in order to reduce slipping in the body cavity, to reduce trauma to tissue, and to ease the workload on surgical personnel.

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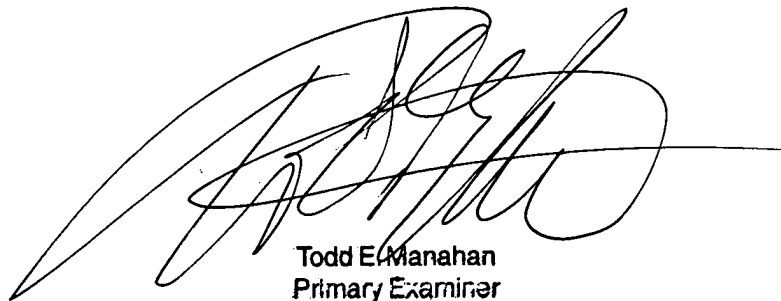
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D. Comstock
26 July 2004



Todd E. Manahan
Primary Examiner